

**FAIRFAX COUNTY PLANNING COMMISSION
SCHOOL FACILITIES COMMITTEE
THURSDAY, JUNE 3, 2004**

PLANNING
COMMISSION
COMMITTEE
MEMBERS
PRESENT:

Walter L. Alcorn, At-Large
John R. Byers, Mount Vernon District
Suzanne F. Harsel, Braddock District
Frank A. de la Fe, Hunter Mill District

SCHOOL BOARD
MEMBERS
PRESENT:

Catherine Belter, Springfield District
Kathy Smith, Chairman, Sully District
Judith (Tessie) Wilson, FCPS, School Board Member, Braddock District

STAFF
PRESENT:

Kris Abrahamson, Chief, Rezoning and Special Exception Applications,
Zoning Evaluation Division, DPZ
Michelle Brickner, Director, Office of Site Development Services,
Department of Public Works and Environmental Services (DPWES)
Thomas Brady, FCPS, Chief Operating Officer
Gary Chevalier, FCPS, Director, Office of Facilities Planning Services
Norma J. Duncan, Associate Clerk, Planning Commission Office
Barbara J. Lippa, Executive Director, Planning Commission Office
Donna McNeally, Assistant Division Director, Zoning Evaluation
Division, Department of Planning and Zoning (DPZ)
Dean Tistadt, FCPS, Assistant Superintendent, Department of Facilities &
Transportation Services

OTHERS PRESENT: James R. Hart, Commissioner At-Large
Ronald W. Koch, Sully District
Janet R. Hall, Mason District

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Chairman Harsel called the meeting to order at 7:30 p.m.

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Noting three agenda items, Chairman Harsel encouraged interaction between the Commission and School representatives. She restated information from the last meeting regarding the rezoning process, advising that negotiating proffers on schools was particularly difficult and that this meeting was an effort to make that process run more smoothly.

She introduced Donna McNeally from the Department of Planning and Zoning (DPZ), and noted that DPZ had developed suggested proffer language for six different types of school-related proffers.

Ms. McNeally distributed her handout (copy in the committee file) and explained staff's review of school proffers received over the last 18 months and why they were categorized as listed. She indicated that the language was similar in all the examples except the first one which was a specific contribution to a specific school. She noted that DPZ was still working on proffer language to use as models and asked for guidance from the members for other variations.

Commissioner de la Fe offered his opinion that a proffer should be listed for land since everything else was cash, goods, or service. Other Commissioners agreed.

Commissioner Hall pointed out that what the committee was doing was not that unusual. She noted that there was a news clip about impact fees for schools being the wave of the future.

Commissioner Harsel made another point regarding the reference to "per pupil" or "per unit" as it applied to a formula that incorporated only additional students generated. Some had calculated it per unit, she said, and asked what the members would prefer.

Gary Chevalier, FCPS, stated that for the sake of continuity the committee should stay with the per pupil formula. He mentioned that the formula lent itself to the argument that expensive housing would not deliver as many children as the County average. Commissioner Harsel noted there had been one processed the previous week using the "per unit" formula.

Commissioner Hall clarified that these students were in addition to what would be done by-right. Referring to the list, she asked that they replace "pursuant to" with "per" and then asked why they continued to refer to a developer as an applicant. Ms. Abrahamson answered that they always use the term "applicant" in their proffers.

Commissioner Hall asked the difference between a school pyramid and vicinity schools because, as a former PTA President, she thought the vicinity schools were in the pyramid going to the high school. Gary Chevalier observed that the difference could be in the magisterial district. Dean Tistadt, FCPS, stated that a "pyramid" was specific, whereas "vicinity" gave schools more flexibility.

Commissioner Byers said that using magisterial district in a formula would create major problems in Mount Vernon as it was essentially split by Fort Belvoir, noting that the new school population in the Lorton area did not feel they belonged to the Mount Vernon District.

Tom Brady, FCPS, stated that another artificial construction that could be considered were administrative clusters, which would eliminate the Mount Vernon problem because Cluster 4 matched the specific pyramid and would perhaps work better than "vicinity".

Commissioner Harsel doubted that would work, she said, because many times the pyramid crossed magisterial lines. Commissioner Hall countered that vicinity could also cross magisterial lines. There was discussion about other districts with the same problems and Commissioner Harsel asked members if they should remove those terms from the language.

Mr. Chevalier noted that there was CIP proffer language that could be used which would allow the School Board to direct funds anywhere in the County as needed. He noted that if the proffer was tied into a specific school, it would cover those who felt strongly that the local community must benefit, and for those who were more flexible, the CIP proffer could be used.

Commissioner Harsel advised that if the proffer went to the Board of Supervisors (BOS) before going to the School Board, the BOS would have first say on how the money was spent, which she did not agree with.

Commissioner de la Fe remarked that the committee was trying to develop language for a variety of situations that would be covered by the proffer list. He stated his view that few would go generally to County schools considering the political nature of the process, but Commissioner Harsel countered that a lot of proffers had already been processed that way.

Mr. Tistadt discussed the timing of proffers since the process could actually take many years. He indicated that if the proffer was specific to a need of the moment, it might not be the same situation by the time of actual proffer receipt. He noted that the more specific assignment of proffers meant a reduction in School Board options for meeting existing needs.

Commissioner Alcorn stated that under the implementation motion, if there was an acknowledgement of proffers that had been dedicated to a completed specific project and those funds were not used, they would be released and used elsewhere.

Commissioner Harsel asked Ms. McNeally where that was shown in the document. Ms. McNeally replied that it was in the fourth bullet under Public Facilities Criterion, "Distribution of Contributed Funds", third paragraph down, which stated: "Specified monetary and in-kind proffered contributions for school projects that are already completed, are no longer needed or have been removed from the school's CIP prior to receipt of the proffered funds will, consistent with actual proffer language, be considered funds for school capital construction without restriction and be appropriated by the Board of Supervisors during the budget review/first year CIP cycle."

Commissioner Alcorn noted that when unused funds were utilized this way, it didn't necessarily address the particular situation of a pyramid but would take care of other identified school needs.

Commissioner de la Fe commented that time limits were set in the proffers as "prior to subdivision/site plan approval," which was earlier than used by the Park Authority.

Commissioner Harsel called on Commissioner Byers to explain his issue that would be raised at the Commission meeting that night. Commissioner Byers said the problem had to do with the timing of the contribution. He asked if a proffer was based on data from the school and made prior to subdivision/site plan approval, and the site plan ultimately was not approved, how would the developer get his money back?

Commissioner Harsel asked Michelle Brickner, Director of Site Development Services at DPWES, to explain. Ms. Brickner stated that her office would enforce the language of the

proffer, and if it called for payment prior to subdivision/site plan approval, the developer would not get approval until it was paid.

Commissioner Alcorn said that this subject had been a matter of discussion before the criteria was developed and the phrase “prior to approval of subdivision/site plan” was preferred because it represented a milestone easily measured, unlike a criteria such as the 50th building permit.

Commissioner Byers presented a case as an example, wherein DPWES decided not to approve the site plan unless two of the houses were removed and those two houses changed the number of attending students. He questioned how the developer would get his money back. Others remarked that the developer would not get a refund, which led to another discussion about fairness.

Commissioner Alcorn said that the developer should not make the cash contribution until the last minute. He asked if that was normal and Ms. Brickner replied that normally they did not pay until the bonding stage so that the design was stable. Commissioner Alcorn replied that the developer could always come back at that point for a proffered condition amendment if it involved a significant amount of money.

Commissioner Harsel asked if they should state in the language before bonding and after subdivision/site plan approval, but the Committee decided that the language was okay as written.

Commissioner Hall suggested that on the first proffer model they state “cash contributions to specific schools for specific improvements” to designate as many schools as desired and delete the next two referencing proffer language for pyramid and vicinity. That would leave cash contributions to the County schools, she added. For the sake of simplicity, the Commissioners decided to incorporate proffer models two and three into the first model.

Commissioner Alcorn stated that the committee had been working under the assumption that proffers one and four would be the primary proffers, with number one designating funds going to the school system administratively and number four to the Board of Supervisors as part of the CIP process. He said that did not mean to him that number one would not get counted as part of the CIP process and asked if everyone was reading it the same way.

Ms. Brickner questioned what the implementation policy meant by “without restriction” since the committee had agreed to remove numbers two and three of the proffers, and asked which categories would be used. Mr. Chevalier commented that the process was essentially the same except that number one was designed for a specific school whereas number four was a general category and determined by the Board of Supervisors. Commissioner Alcorn confirmed that Mr. Chevalier’s understanding was correct.

Ms. Abrahamson remarked that her office had been regarding the proffers that stated procurement, or just vicinity schools, as a general pot. Commissioner Alcorn acknowledged that it was an issue the committee had to figure out but that he had no strong feelings either way. Commissioner Harsel asked if any money had been given to the Board of Supervisors through

the CIP. Commissioner Alcorn stated that no proffered funds post implementation of the criteria had yet come through the process as of six weeks prior to the meeting.

Commissioner de la Fe remarked that he didn't see why they could not have all four of the model proffers. He said he saw no problem with having as many model proffers as necessary as long as they knew which to select.

Commissioner Hall countered that the problem would be with a developer who might not know a pyramid from a district, but had met with the PTA of Glasgow Middle School or Jeb Stuart High School and knew that was where he wanted the funding. She said it was less complicated to get rid of unfamiliar terms. The idea, she stated, was to have multiple proffers but to streamline them for ease-of-use for the community, the Planning Commissioners, and developers to get them what they actually needed. Commissioner Harsel agreed that if kept simple, the proffers would be easier to interpret.

Ms. Brickner stated that, for tracking purposes, it would be okay to use the vicinity description as long as it was defined the same way each time or it would all go to a vicinity pod. She opted for stronger definitions.

Commissioner Harsel did not believe the proffers had been well-defined and added that the Committee had no knowledge of how the BOS was going to handle proffer number four. She asked, in a scenario, if the BOS said they had \$20K from the proffer system directed to Fairfax County Schools, if they could then decide the funds were to be used for renovation at Woodson High School.

Commissioner Alcorn said that point had been discussed while doing the development criteria. Their discovery, he said, was that once the funds were transferred from the BOS to the FCSB, there was no legally binding commitment that the BOS could make on how those funds were to be used. He said the committee had to develop some common understanding and practice-making policies to ensure that funds would be used consistently with the proffer language because although there was legally no commitment, there was certainly a good faith working relationship toward implementation on both the school side and the County side.

Commissioner Hart returned to Commissioner de la Fe's observation about proffer numbers two and three. He reasoned that if the committee kept only numbers one and four of the proffers, number one should be made more broad because he could conceive of a situation in which a developer had negotiated with the neighbors who did not want funds to be undesignated to prevent disbursement to another district instead. If number one, he pointed out, had no specific school improvement, the only other choice would be number four where the money could go anywhere, making selection criteria too narrow. Removing the phrase "for specific improvement" might broaden number one enough, he offered, but might not totally solve the problem.

Commissioner Harsel mentioned that, as Commissioners, each of them should talk to their School Board Member to discover school needs in their districts.

Mr. Chevalier produced a list of most of the CIP projects and whether they were funded or unfunded stating that it was updated annually.

Commissioner Hall agreed with Commissioner Hart's suggestion to remove specific improvements to get flexibility for funds to go exactly where they were intended.

Commissioner Alcorn said that if the committee decided to go that way it could qualify for an administrative transfer from DPWES to the school system without going through the BOS which would keep it from being held up.

Commissioner Harsel asked the School Board Members how they felt about the ideas put forth by the Commissioners. Kathy Smith, School Board Member, Sully District, said they were just waiting for the pot of gold. She said the recommendations for change were good and made sense because one was specific and one was Countywide.

Commissioner Harsel asked Commissioner Alcorn to explain where the money was disbursed. He replied that it was part of the public facilities criterion involving facility improvements the Commission had been working on and acknowledged that the School Board members had also been working on a policy to insure that funds went to needed capital improvements.

Commissioner Hall asked Commissioner Alcorn whether he wanted to add more language. He replied that more could be added to the proffer but the whole development criteria was public facilities and the language had been stretched with computers which lose value quickly. Commissioner Hall said that the CIP did not happen under number one and he acknowledged that number four should be CIP. Commissioner Harsel remarked that even one or two students would build up the CIP pot which Mr. Chevalier admitted would offset the cost of a project whenever it became funded.

Commissioner Alcorn asked if the staff had numbers to share on a split between the general contributions that had been proffered since January 2003, and then everything else. Ms. Abrahamson indicated that the total cash contributions were \$4,587,771.00. She noted that the amount that went to specific schools was \$1,585,000 which left a little over \$3,000,000 that was proffered to specific schools. Commissioner Alcorn pointed out that those figures split numbers two, three, and four, with not much going to four.

Commissioner Harsel commented that having guidance would make the criteria less confusing. She asked Ms. Abrahamson whether applicants asked for suggested proffer language and Ms. Abrahamson confirmed that developers often did. Ms. McNeally noted that this usually depended on the district of the project. She acknowledged giving guidance based on what the Supervisors' offices' had indicated as their priorities. She added that in cases where the priority was unclear, staff generally advised the developer to speak with the Supervisor's office for a determination.

Commissioner Byers questioned who determined the proffer. He said he had a developer who said that he had made a proffer but the County could not tell him what it should be, so he would give the County the money the day he received site approval.

Ms. McNeally explained that projects go through the site review process and nobody makes contributions up front, but instead at the “time of site plan approval.” She further stated that at the next phase of the process, bonding, she noted that the bonding department would assign values to the proffer. Contributions would be made at that point, she asserted, and there was no more negotiation on the plan design. Any argument would be somewhat moot, she conjectured, because they would already know the number of units. Commissioner Byers remarked that if proffers were made at the time of bonding, that it should be stated that way. Ms. McNeally said she thought it was the same issue but didn’t know if there was any problem with changing the wording to show that but would check.

Commissioner Byers emphasized that the Commission was going to face that issue that night. Ms. McNeally said that the developer was not familiar with the system and did not understand the site review process. Commissioner Byers noted that his lawyer did. Commissioner Hall said that since they had narrowed the proffers down to two she wanted number four to be the default. In situations where the school staff did not have a stated need, she said, it would default to number four. Mr. Chevalier asked that if number four was considered a default, should they remove the end of the last sentence that read “as determined by the Board of Supervisors.” The Commissioners agreed that it should be removed.

Commissioner Hart opted to address Commissioner Byers’ dilemma with the developer because he believed there were circumstances in which someone could appeal the approval of a site plan. Commissioner Hart established a scenario under which everything was negotiated and completed including bonding, calculations, and contributions, except approval of the site plan. Ms. McNeally mentioned that an alternative might be a modification.

Commissioner Hart suggested the possibility that they were making more of it than necessary and there might be a generic last resort process whereby if development approval was vacated, the money would be returned to the applicant. Ms. Brickner advised that even if the plan was approved, then appealed after the fact, or a decision was made but approved in error, the County would not abandon the project, but would amend the plan to go forward rather than end the project after the investment of money.

Commissioner Alcorn submitted that there were other cash contributions such as the Housing Trust Fund and road fund contributions, which might be larger issues to be dealt with separately.

Ms. McNeally determined it was more a procedural issue with staff perception than an issue for the proffers. She concluded that the three DPWES staff members in attendance had been with the County a long time and none could not think of a single case that had been held back. She contended that the process should be dealt with on an interpretive and procedural level rather than negotiating the language in the proffers.

Commissioner Harsel asked if the committee members were all comfortable with proffer numbers one, four, five and six. Commissioner Hall declared that she was not comfortable with number five. She suggested that Commissioner de la Fe’s desire to include land was a wonderful idea and recommended that they place goods, services, land, of equal or greater value, in lieu of

contribution. She further suggested a deletion of the first couple of sentences and requested it start with "in lieu of the cash contribution if approved by the Board of Supervisors or its authorized agent, the Applicant may make an in-kind contribution for capital improvements to Fairfax County."

Commissioner de la Fe stated his appreciation for Commissioner Hall's idea but said he would rather have a separate proffer for land. The other members agreed. Commissioner Alcorn also recommended a separate proffer for land because the County says that is their top priority, first and foremost. Commissioner Hall agreed to get rid of land but requested the retention of her other two suggestions because of their importance, not to settle for equal but leave the door open to get something of greater value. She suggested they begin where the proffer read "in lieu of cash contribution" and add land.

Commissioner Alcorn noted that the proffers were written with the expectation that cash was the primary vehicle without considering that land was the County's first priority. He said he liked the in-kind but wanted to remove some of the assumptions pointing toward cash. Commissioner Alcorn commented that this was a situation where the Park Authority had done a yeoman's job in working through similar issues. He said a lot depended on how many proffers were received and if many were offered, it would probably be worth investigating how to make it work. He acknowledged that the Park Authority had managed it but did not know how much they had changed their policies in that effort.

Commissioner Harsel asked Ms. Brickner to explain the tracking of monies. As an example, Commissioner Harsel asked how she would know whether a developer had paid his funds if he had site plan approval and processed through bonding. Ms. Brickner replied that they had staff in Document Control who looked at proffers to make sure the cash proffers were collected for the Park Authority or the school and would preclude approval until those conditions were met. She said that if the funds were going toward the CIP, it would be tracked as a contribution to the Board of Supervisors and if to a specific school, a form letter would be sent to the school. Also, she said, they always notified the School Board by email of the specific amount of money for the designated school and then assembled a hard copy package containing the proffer language in the calculations and informed them at time of transfer. Commissioner Harsel questioned whether the information was sent to the individual school or to Mr. Chevalier. Ms. Brickner replied that it was sent to the financial analyst in Design and Construction. Mr. Chevalier acknowledged that he also received a copy.

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After a short discussion with School Board Members, Commissioner Harsel indicated that the next School Facilities Committee meeting would be convened on July 14, 2004.

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SCHOOL FACILITIES COMMITTEE

June 3, 2004

The meeting was adjourned at 8:18 p.m.
Suzanne F. Harsel, Chairman

For a verbatim record of this meeting, reference may be made to the audio recording which can be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Norma Duncan

Approved on: October 20, 2004

Linda B. Rodeffer, Clerk
Fairfax County Planning Commission